

This is a courtesy copy of this rule. All of the Department's rules are compiled in Title 7 of the New Jersey Administrative Code.

SUBCHAPTER 4. SPILL COMPENSATION AND CONTROL ACT DIRECTIVE

7:26C-4.1 Scope

This subchapter identifies the procedures and requirements for a person to respond to a Spill Compensation and Control Act directive issued by the Department.

7:26C-4.2 Spill Compensation and Control Act directive

(a) Pursuant to the Spill Compensation and Control Act, the Department may direct persons who are in any way responsible for a hazardous substance at a site to:

1. Clean up and remove the discharge including the actual removal of the contamination or measures designed to prevent or mitigate risk to the public health and safety and the environment; or
2. Arrange for the cleanup and removal, including funding the Department's cleanup and removal costs or any other indirect arrangement the Department approves in the exercise of its enforcement discretion.

(b) A directive is intended to constitute a clear, written notice of a person's potential liability under N.J.S.A. 58:10-23.11 et seq., for any cleanup and removal costs and to provide that person a timely opportunity to respond to the directive.

(c) To the extent possible, the Department will provide in the directive general notice as to:

1. The site of the discharge or threatened discharge;
2. The identity of those responsible parties receiving the directive;
3. The connection of each such responsible party to the discharge;
4. The nature of the necessary remediation or the estimated remediation costs;
5. The actions that the responsible parties are directed to take;
6. The manner and timetable for the undertaking of the remediation; and
7. The identification of a period in which the responsible parties may respond to the directive.

(d) The Department may issue a notice to an insurer or any other person the Department believes may have financial responsibility for a hazardous substance at the site.

(e) In those instances where the Department directs a responsible party to clean up and remove a hazardous substance, the Department will require an administrative consent order in order to provide assurance that any remediation required by that directive will be performed in a timely and proper fashion. These administrative consent orders shall conform to N.J.A.C. 7:26C-5.

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(f) Prior to the expiration of the time for a response contained in the directive, the Department will be available to discuss the directive upon receipt of a written request from a responsible party to the Department's contact person designated in the directive.

(g) The responsible party shall communicate its selection of one of the following responses to the directive in writing to the Department's contact person identified in the directive within the time period set forth in the directive.

1. If the responsible party decides to comply with the directive, the directive recipient shall respond in accordance with the specific instructions contained within the directive.

2. If the responsible party decides not to comply with the directive, but decides to pay for certain portions of the remediation specified in the directive, the responsible party shall make such payment in mitigation of any liability that it may possess and comply with (h) below; however, the Department may refuse any payment made pursuant to this paragraph if there are any conditions attached to that payment.

3. If the responsible party decides not to comply with the directive, the directive recipient shall indicate in writing that it chooses not to take any actions to comply with the directive and comply with (h) below.

(h) If the responsible party chooses to pay in mitigation of its liability under a directive or not to comply with a directive, the responsible party shall submit a written response to the Department according to the requirements in the directive. The responsible party shall include in the response a detailed explanation of the person's reasons for its decision, including all good cause defenses therefor.